

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MICHAEL BRUCE BYNOE,

Petitioner

v.

HELLING, *et al.*,Respondents.

Case No.: 3:07-cv-00009-ART-CLB

Order Granting Motion to Stay and
Administratively Closing Case

(ECF No. 179)

Petitioner Michael Bruce Bynoe, through counsel the Federal Public Defender, moves for a stay of his 28 U.S.C. § 2254 habeas corpus action. (ECF No. 179). Counsel explains that Bynoe has been released from prison, and she has been unable to contact him about whether he wishes to continue to try to withdraw his guilty plea. The Court finds good cause and grants the stay.

District courts generally have authority to issue stays where such a stay would be a proper exercise of discretion. *Rhines v. Weber*, 544 U.S. 269, 276 (2005). “[T]he decision to grant a stay, like the decision to grant an evidentiary hearing, is ‘generally left to the sound discretion of district courts.’” *Ryan v. Gonzales*, 568 U.S. 57, 74 (2013) (quoting *Schriro v. Landigan*, 550 U.S. 465, 473 (2007)). And “[a]n attorney undoubtedly has a duty to consult with the client regarding ‘important decisions,’ including questions of overarching defense strategy.” *Florida v. Nixon*, 543 U.S. 175, 187 (2004); *see also id.* (explaining that with respect to certain decisions, “an attorney must both consult with the defendant and obtain consent to the recommended course of action”). The question here doesn’t concern counsel’s strategy to achieve

1 Bynoe's objectives, but "what [Bynoe's] objectives in fact are," which is for
2 Bynoe to determine. *McCoy v. Louisiana*, 584 U.S. 414, 422 (2018).

3 Counsel explains that Bynoe has been released from prison, and
4 therefore, counsel wants to confirm that Bynoe still wishes to withdraw his
5 guilty plea. (ECF No. 179.) Bynoe has long-standing mental health issues, and
6 while counsel has diligently tried to communicate with him, she has been
7 unsuccessful so far. Thus counsel proposes that the Court stay the case and
8 order status reports every four months. Counsel explains that she has been in
9 contact with a third party who is actively communicating with Bynoe, so there
10 is some likelihood that contact will be established. Respondents state that
11 under these circumstances, they do not oppose a stay. (ECF No. 180.) They
12 express concern, however, about this litigation continuing indefinitely. The
13 Court concludes that a stay is warranted here so that the FPD can attempt to
14 consult with Bynoe. Therefore the Court grants the motion and will also order
15 periodic status reports.

16 It is therefore ordered that Petitioner's unopposed motion for stay and
17 abeyance (**ECF No. 179**) is **GRANTED**.

18 It is further ordered that this action is stayed while counsel for Petitioner
19 attempts to contact him.

20 It is further ordered that counsel for Petitioner file status reports every
21 four months.

22 It is further ordered that if counsel for Petitioner files a third status
23 report, counsel will show cause in that status report as to why this case should
not be closed for lack of prosecution.

24 It is further ordered that the grant of a stay is conditioned upon
Petitioner returning to federal court with a motion to reopen the case within 45
days of any decision by Petitioner to continue to litigate the case.

The Clerk of Court is directed to administratively close this action, until such time as the Court grants a motion to reopen the matter.

Dated this 14th day of August, 2025.

Anne Russell Pen

ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE